

REMARKS

Claims 1-24 are currently pending, claim 25 having been canceled by the present amendment and claim 16 having been amended.

Favorable reconsideration of this application is respectfully requested in view of the following remarks.

Claim Amendment

Claim 16 has been amended to recite a first storage layer that is located between the acquisition layer and liquid permeable upper surface. Support for this amendment may be found throughout the specification and at least at claim 25 (now canceled).

Applicants' Absorbent Article Comprising An Absorbent Structure

According to one embodiment of the invention, an absorbent article has a first storage layer 105 having apertures and recesses 107. See Fig. 2. The first storage layer 105 is arranged closest to a liquid permeable layer top sheet 101, a second layer 106 is arranged closest to a substantially liquid impermeable backsheet 102 and an acquisition layer 104 is arranged between the first storage layer 105 and the second storage layer 106. See ¶ 35 and Fig. 2. The first storage layer 105 may include a super absorbent material, which is a polymer that is capable of absorbing fluid many times its own weight. See ¶ 30.

Art Rejections

Claims 1-5, 7-9, 13-17 and 19-23 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Gross (US Pat. App. No. 2003/0208175) in view of Bernardin (USPN 5,009,650). This rejection is respectfully traversed.

In characterizing Gross, the Office asserts that Gross teaches that the wicking layer is a "lower storage layer" and cites paragraph [0005] of Gross for support. The Office is relying on a discussion in the "Background of the Invention" section discussing an absorbent structure in USPN 5,009,650 and *not* what Gross is teaching about its own wicking layer. In fact, Gross actually teaches that its own wicking layer is not a "lower storage layer." Instead, Gross teaches that the wicking layer 13 is designed to effectively transport fluid vertically (see e.g., ¶ [0069]) and

effectively transport the vertically wicked fluid to the adjacent fluid storage layer (see e.g., ¶ [0009]). Accordingly, the wicking layer of Gross is not a storage layer.

The Office further alleges that Gross teaches that the same material can be used in the wicking layer as in the storage layer 12. This is another mischaracterization of Gross. Again, the Office is relying on a discussion in the "Background of the Invention" section discussing the absorbent structure in USPN 5,009,650 and *not* what Gross is teaching about its own wicking and storage layers. Clearly, Gross teaches that the wicking layer and storage layer are independent layers with different purposes and compositions. See e.g., ¶ [0069]. The wicking layer is designed to effectively transport fluid while the storage layer is designed with a high absorbent capacity in order to store liquid. The layers are clearly not identical. Yet, the Examiner appears to rely upon the (incorrect) assertion that the wicking and storage layers of Gross are of the same material to make assertions regarding the amount of superabsorbent materials and the density of the storage layers. These assertions are incorrect. Gross does not teach a storage layer with a density that exceeds 0.4 g/cm³. The Office is requested to withdraw such assertions or provide support in Gross, support discussing the wicking layers of Gross and not the background art, for each step/aspect of the density assertion.

In Applicants' March 3, 2006 Response, it was respectfully noted that Gross's storage layer has superabsorbent material, not the wicking layer. This rejection has been withdrawn. However, now the claims stand rejected as unpatentable under 35 U.S.C. § 103(a) in view of Gross and newly cited reference Bernardin. As best understood, the rejection is based on the view that it would have been obvious in view of Bernardin to modify Gross's wicking layer 13 so that it is comprised of a superabsorbant material.

In the March 3, 2006 Response, Applicants pointed out that the "addition of superabsorbent material in Gross's wicking layer would run counter to Gross's objective, which is to have fluid reside in the storage layer, not in the wicking layer. See, e.g., ¶¶ [0009] and [0069] of Gross." See Page 11-12. Thus, Applicants noted that one of ordinary skill would have understand that Gross taught a wicker layer 13 that should not be made of a superabsorbant material because that would defeat the purpose of Gross's wicking layer, i.e., transporting and distributing fluid into an

adjacent layer. This teaching in Gross is easily understood at least by reference to Paragraphs [0009] and [0069] of Gross. The wicking layer 13

efficiently **transports** fluid vertically . . . and also **distributes** the fluid laterally into an adjacent fluid storage layer The wicking layer is **physically independent** of the other layers of the absorbent core It is hypothesized that the osmotic pressure (fluid suction power) of the superabsorbent material in the storage layer is the driving force behind the **effective transfer** of the vertically-wicked fluid from the higher density or smaller pore size wicking layer back into the lower density storage layer. . . . This high osmotic driving force overcomes the natural tendency for fluid to remain in regions of smaller pore size capillaries.

Gross ¶ [0069] (emphasis added). Gross's summary of invention states that "[a]n *essential* feature of the wicking layers of this invention is the ability to effectively *transfer the vertically wicked fluid to the adjacent fluid storage layer.*" Gross at ¶ [0009] (emphasis added). Thus, according to Gross the wicking ability in a wicking layer is essential. One of ordinary skill in the art would therefore not have been motivated to modify Gross's wicking layer with a superabsorbent material, as suggested by the Official Action. The addition of a superabsorbent material would reduce the wicking ability of the layer 13 and thus modify Gross's device in direct contravention to Gross's explicit teaching. For at least this reason, Applicants respectfully request that the rejection under 35 U.S.C. § 103 be withdrawn.

Moreover, if even if Gross were modified in view of Bernardin, the alleged combination would not teach or suggest the presently claimed invention. Bernardin does not suggest modifying a wicking layer so that it possesses superabsorbant qualities. Rather, Bernardin discloses a superabsorbant material 9 that is placed between two higher density areas 10, 11 so that additional storage area is available for fluids. See Col. 4, ll. 33-63. Layers 9, 10, and 11 are independent layers placed adjacent to each other, not a single layer. Thus, Bernardin does not teach a wicking layer which contains superabsorbent material. The superabsorbent material is a separate layer.

To the extent that the Official Action has taken the view that Bernardin's layer 9 and layers 10 and 11 are a single layer (the Official Action refers to a "wicking/storage layer") which corresponds to the wicking layer 13 of Gross, Applicants respectfully disagree. The wicking layer and a storage layer are two layers which are distinct from each other, both functionally and physically as Gross points out at length ("The wicking layer is **physically independent** of the other

layers of the absorbent core." Gross ¶ [0069]). For at least this additional reason, Applicants respectfully request that the rejection under Section 103 be withdrawn.

Claim 16 also stands rejected over Gross and Bernardin. Claim 16 now recites a first storage layer that is located between the acquisition layer and liquid permeable upper surface, which is a feature that was previously recited in dependant Claim 25 (now canceled). This feature of Claim 16 is nowhere taught or suggested by Gross.

The Official Action rejected 25 based on the view that Gross's "storage layer 12 is located between said top sheet [10] and said acquisition layer 11". This is plainly an inaccurate reading of Gross. As stated in ¶ 84, 85, "[t]he acquisition layer 11 is positioned between the top sheet 10 and the storage layer 12 . . . [and the] the wicking layer 13 is positioned below the storage layer 12". This relationship is also illustrated in FIG. 1. Claim 16 recites a first storage layer that is located between the acquisition layer and liquid permeable upper surface, a feature not disclosed in Gross. For at least this reason, Applicants respectfully request withdrawal of the rejection of Claim 16 and allowance of this claim.

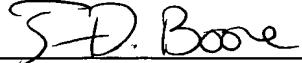
Claims 2-15 and 17-24 depend from allowable Claims 1 and 16, respectively, and recite additional features of invention that further distinguish over the art. As each of these claims depend from allowable claims, there is no need to point out each of these additional distinctions over the art at this time. Allowance of Claims 2-15 and 17-24 is earnestly solicited.

Conclusion

Should any questions arise in connection with this application or should the Examiner believe that a telephone conference with the undersigned would be helpful in resolving any remaining issues pertaining to this application, the undersigned respectfully requests that he be contacted at the number indicated below.

Respectfully submitted,
BUCHANAN INGERSOLL & ROONEY PC

Date: August 25, 2006

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